

NEIGHBORS FOR A BETTER SAN DIEGO
RESPONSE TO NOVEMBER 19, 2021 SAN DIEGO DRAFT HOUSING ACTION PACKAGE
December 8, 2021

EXECUTIVE SUMMARY

The City of San Diego is proposing new housing regulations affecting single-family zones. The proposed regulations are described in Section 2 of the Housing Action Package, which implements SB 9, and Section 3 of the Housing Action Package, which proposes minor changes to current ADU regulations.

While Neighbors For A Better San Diego welcomes the recognition that ADU regulations need to be revised, our analysis of current ADU development, particularly the negative impacts of investor-driven, multiple ADU projects, concludes that the city's proposed revisions do not meaningfully address the concerns that have been raised by residents of San Diego, particularly with regard to the structure of the city's ADU density bonus program; height and setback requirements; fire safety; and collection of fees needed to address San Diego's growing infrastructure deficit.

With regard to SB 9, which authorizes the splitting of lots and building of two units on each lot, Neighbors For A Better San Diego finds the regulations proposed in the Housing Action Package to be generally acceptable relative to state requirements. We do propose some additional amendments which we feel will clarify the code and ensure that it reflects the intent of state law.

Neighbors For A Better San Diego recognizes that California has a housing shortage and appreciates that legislation has been enacted to address that problem. Our goal is to mitigate the negative impacts of infill development in single-family zones, and to enhance the affordability components of local implementation of these measures. By appropriately balancing the need for more housing with the capacity of neighborhoods to absorb additional units, these projects can be a meaningful contributor to San Diego's housing stock compatible with their neighborhoods.

Below we summarize our recommended amendments to San Diego's proposed Housing Action Package. Page numbers refer to the Housing Action Package.

SECTION 3: ADU REGULATIONS

ADU INCENTIVES

These recommendations would reduce excessive localized impacts and improve affordability of ADUs.

- Remove Density Bonus in Transit Priority Areas, correct By-Right misinterpretation (p. 59)
- Remove Moderate Income ADUs from Affordable Table (110% AMI down to 80% limit) (p. 59)
- Extend Affordable Deeds from 15 to 30 years (p. 59)
- Replace Density Bonus with Size Bonus: Limit ADU to 1,000 sf but offer +200 sf for Affordable (p. 59)

BUILDING FORM

These recommendations would reduce ADU impacts and promote the goals of the Climate Action Plan.

- 4 ft Setbacks & 16 ft Ht limit for detached ADUs & 24 ft Ht limit over existing structures (p. 55)
- Pre-Approved Architectural Plans (p. 53)
- Apply PDO Architectural Criteria except those specifically contradicted in 141.0302 (ADU Code) (p. 63)
- Tree Replacement – 1 tree per 5,000 ft lot space at 2 or more ADUs (p. 56)

FIRE SAFETY

The point below would make ADU code consistent with San Diego's implementation of SB 9.

- Limit number of Dwelling Units (House + 2ADUs/JADU) in Very High Safety Fire Hazard Zones.

IMPACT FEES

San Diego is suffering from a severe shortage of infrastructure funding and can't afford to be waiving any impact fees unless required by the state.

- All ADUs not exempted by the state should pay all Impact Fees DIF/RTCIP/GPMF etc. (p. 61)
- This is code that should be redirected to the SB 9 Section 143.1310 (p. 62)

PARKING & PUBLIC RIGHT-OF-WAY

This would allow for a realistic parking standard that takes into account the city's local topography and other barriers to walking to transit.

- Require parking outside the TPA, but redefined as one-half mile Walking Distance (p. 57)

OWNER OCCUPANCY

This would mitigate the impacts of investor speculation, absentee landlords and gentrification of single family neighborhoods.

- Require owner occupancy for ADUs permitted in 2025 and later as allowed by state law. (p. 58)
- Owner occupancy registry (p. 60)

CODE CLARIFICATION

This would fix an apparent drafting error of the code.

- Clean up minimum ADU size allowance code to match state language (p. 59)

SECTION 2: SB 9 IMPLEMENTATION REGULATIONS

IMPACT FEES

San Diego is suffering from a severe shortage of infrastructure funding and can't afford to be waiving any impact fees unless required by the state.

- Pay all development fees if converting from ADU/JADU to dwelling unit under SB 9 (p. 42)
- Ensure all impact fees and not just DIFs are paid for SB 9 dwelling units (p. 49)
- Pay all fees on all non-preexisting units, rather than waiving first two units per City (p. 62)

PARKING & PUBLIC RIGHT-OF-WAY

These points would address being out of compliance with state law, Huffmanization of our streetscape, and preserving more public greenscape along our pedestrian right-of-ways.

- TPA is out of compliance with SB 9 – Change to one-half mile walking distance to transit (p. 45)
- Distribute off-street parking between two SB 9 lots – Shared 15 ft curb cut for post SB 9 lot split (p. 46)
- Shared 15 ft curb cut (p. 50)

RECORD KEEPING

This would help mitigate the impacts of investor speculation, absentee landlords and gentrification of single family neighborhoods.

- Publicly accessible registry for SB 9 development to monitor adjacent development (p. 50)
- Publicly accessible registry for SB 9 development, to monitor owner occupancy (p. 50)

BUILDING FORM

This change would minimize risk/instances of over-building and its environmental consequences: run-off, heat island, tree canopy loss, etc.

- Code unclear – match state law. Neither unit can exceed 800 sf unless the FAR allows. (p. 49)

RESCISSION

It would remove an artifact of state law if no longer applicable.

- Ceases to be in effect if SB 9 is revoked or otherwise no longer in force.

DRAFT Housing Action Package Section 2: Implementing Regulations for SB 9

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SUBJECT: Automatic Rescission if Underlying State Law is Nullified

PROPOSED MUNICIPAL CODE: 143.1303(b)(1)(K)

SB 9 is being implemented as required by state law. The proposed code includes no contingency if the underlying state laws are repealed or otherwise no longer in force.

We ask that Section 143.1303 be amended to stipulate that all implementing code for SB 9 (143.1303, 143.1305, 143.1307, 143.1310, and 143.1315) be rescinded in the event that SB 9 is nullified. This would except those sections needed for ongoing maintenance of built and in-progress SB 9 projects, such as monitoring and enforcement of the owner-occupancy affidavits.

If the Our Neighborhood Voices initiative is passed by California voters, it indicates the will of the people to remove housing legislation forced on cities by state legislators and to return those decisions to local communities. Therefore, SB 9 would no longer be state law and San Diegans would determine for themselves whether or not to allow duplexes and lot splits on their single-family zoned parcels.

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SUBJECT: Impact Fees

PROPOSED MUNICIPAL CODE: 143.1303(b)(5)

The proposed HAP code stipulates that a premises must use either the provisions of the SB 9 implementation code or ADU/JADU code, but cannot use both. However, an applicant can elect to convert an existing ADU/JADU to a dwelling unit to participate in SB 9 lot splitting or to build a duplex.

We ask that this section be further amended so if an applicant converts existing ADUs/JADUs to dwelling units, part of the conversion process would require the applicant to pay all of the impact fees that were waived for the ADU/JADU, per 142.064(b)(1), including DIFs, RTCIPs, and GPMFs, as enumerated in City of San Diego Information Bulletin 400 pg. 9. Charging these fees at the time of conversion to a dwelling unit would stop misuse of the ADU/JADU code to avoid paying impact fees.

San Diego is suffering from a severe shortage of infrastructure funding and cannot afford to be waiving any impact fees unless required by the state.

SB 9 does not prohibit the collection of impact fees.

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SUBJECT: Use of TPA as Criterion for Off-Street Parking

PROPOSED MUNICIPAL CODE: 143.1310(a)(3)(A)

The proposed HAP code references Transit Priority Areas (TPAs) associated with Public Resources Code 21099 (“No *off-street parking spaces* shall be required within a *Transit Priority Area*”), whereas SB 9 references “within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.” Thus, 143.1310(a)(3)(A) is out of compliance with SB 9.

We ask that this section be corrected to be in compliance with SB 9 and reflect the state-accepted definition of one-half mile walking distance from either a high-quality transit corridor or a major transit stop.

This would eliminate many problems associated with TPAs. Pedestrian distance to transit is known to correlate to transit usage, versus the “crow flies distance” interpretation being applied by the Development Services Department (DSD). This would also be consistent with how city staff calculates distance for marijuana dispensaries. Accordingly, revising the interpretation of TPAs would remove a double standard in city planning.

As quoted above, state law specifies that pedestrian transit access should be measured as one-half mile walking distance to transit. (See CA 65852.2(d)(1), CA 65852.21(c)(1)(A) for other examples where state law uses the one-half mile walking distance for proximity to transit.) Further, CA has stated that, “As a legal matter, the definition of ‘transit priority areas’ is not clear in the statute... As a result, applying one set of rules within transit priority areas and another outside would impose a significant burden on lead agencies to determine on a project by project basis which rules apply. Such uncertainty could also encourage litigation.” State of California, Governor’s Office, Office of Planning and Research, Thematic Responses to Comments, November 2017

State codes supporting these changes include 65852.21, 66411.7, PRC 21155, and PRC 21064.3.

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SUBJECT: Off-Street Parking/Curb Cuts

PROPOSED MUNICIPAL CODE: 143.1310(a)(3)(B)

The proposed HAP code stipulates that outside the Transit Priority Area (TPA) – which we recommend be changed to beyond one-half mile walking distance from transit – “One (1) *off-street parking space* per *dwelling unit* shall be required for the third and fourth *dwelling units* constructed on the two new *premises* permitted by this Division. *Off-street parking spaces* are not required for the first two *dwelling units*.”

We find this code confusing. If the first two units are built on parcel A, does that mean parcel A provides no off-street parking and parcel B must therefore provide two off-street parking spots? Accordingly, we

ask that this section be clarified to indicate that each parcel must provide one off-street parking space if it builds a second unit on the premises. We would also recommend the curb cuts be limited to 15 feet total to be shared by the two lots to maximize street parking and avoid “Huffmanization”. This will maximize potential green space, parkways and trees, while minimizing concrete and runoff. This is consistent with San Diego’s Climate Action Plan.

Our proposed parking change is consistent with CA Code 65852.21(c)(1)(A).

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SUBJECT: Impact Fees

PROPOSED MUNICIPAL CODE: 143.1310(a)(6)

The proposed HAP code stipulates that “Development Impact Fees for *development* constructed in accordance with this Division shall comply with Section 142.0640(b).”

We ask that this code be clarified to confirm that all impact fees will be charged on new units developed under this code, including but not limited to DIFs, RTCIPs, and GPMFs.

ADUs and JADUs have been exempted from all of the above noted fees. We want to ensure that all new units developed through SB 9 will pay full fees, including any converted ADUs/JADUs. San Diego is suffering from a severe shortage of infrastructure and cannot afford to waive impact fees unless required by the state.

SB 9 does not prohibit the collection of impact fees.

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SUBJECT: Minimum Unit Sizes

PROPOSED MUNICIPAL CODE: 143.1310(b)

The HAP proposed code does not appear to clearly reflect the intent of SB 9. In particular, it is unclear whether it would allow an applicant to max out the floor area ratio (FAR) on a premises with the first dwelling unit and then build an additional second dwelling unit up to 800 sf above and beyond the FAR.

We ask that this section be rewritten to match, but not exceed, state requirements, which are that neither unit can exceed 800 sf unless the FAR allows.

Our proposed change is consistent with CA Codes 65852.21(b)(2)(A) and 66411.7(c)(2).

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SUBJECT: Access to Public Right-of-Way for Secondary Unit on SB 9 Lots

PROPOSED MUNICIPAL CODE: 143.1315(a)(2)

This code section mandates access to the Public right-of-way for one or both premises. It does not specifically mandate nor prohibit vehicular access through an additional curb cut through the sidewalk.

We ask that this requirement be codified to maximize pedestrian safety by restricting the expansion of street facing curb cuts to 15 feet total. The regulations applicable when the lot was whole should continue to apply to the two lots when taken together as a single entity.

A shared 15 ft curb cut would increase street parking and improve pedestrian safety by minimizing pedestrian/vehicular conflicts.

SB 9 defers regulation of curb cuts and vehicular access to cities.

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SUBJECT: Adjacent Lot Splits Prohibited By Same/Related Record Owner

PROPOSED MUNICIPAL CODE: 143.1315(c)(2)

The proposed code stipulates that two adjacent premises cannot be subdivided using urban lot splits by the same record owner or someone acting in concert with that record owner.

We ask that this section be clarified to specify which department will keep track of urban lots splits, how the person or people involved with the urban lot splits are going to be defined, how this will be enforced, how the public will have ready access to this data, how enforcement will be handled and by whom, and what the repercussions are for those who might not comply with this policy. Perhaps the means for tracking STVR or JADU compliance could be used for this program.

The City currently relies in part on “complaint driven” enforcement for parking and code violations, for example enforcing residency requirements for JADU owners. The City does not provide easy access to information needed to confirm owner occupancy. If the City is relying on public monitoring and reporting of code violations, then the required information must be made readily and publicly available.

CA Code 66411.7(a)(3)(G) relies upon cities to establish tracking and enforcement mechanisms to ensure compliance with SB 9’s owner occupancy requirements.

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SUBJECT: Three Year Residency Requirement

PROPOSED MUNICIPAL CODE: 143.1315(e)

The proposed code stipulates that the record owner is required to sign an agreement with the City to reside in one of the dwelling units on either of the premises created by the urban lot split as their primary residence for a minimum of three years from the date of the approval of the urban lot split.

We understand that these agreements will be recorded in the Office of the County Recorder. However, we ask that this section be clarified to specify which department will track these agreements, how the public will have ready access to this database (since “complaint driven” enforcement is common), how enforcement will be handled and by whom, and what the repercussions are for those who might not comply with this policy. We suggest that this data be statewide at best, and countywide at least, to avoid builders/developers declaring more than one dwelling as their primary residence simultaneously.

It is unreasonable to expect the public to have to go to the Recorder’s office to search for these documents. The City/County/State should make them readily accessible, including the start and end date for the residency requirement.

CA Code 66411.7(g)(1) relies upon cities to establish tracking and enforcement mechanisms to ensure compliance with SB 9’s owner occupancy requirements.

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SUBJECT: SB 9 Impact Fees

PROPOSED MUNICIPAL CODE: 142.0640(b)(6)

SUGGESTED MUNICIPAL CODE: Somewhere in 143.13

The HAP code stipulates “The first two dwelling units constructed in accordance with Chapter 14, Article 3, Division 13 shall be exempt from the requirement to pay DIF. The **second and third** dwelling units constructed in accordance with Chapter 14, Article 3, Division 13 shall be required to pay DIF...”

We believe this code refers to SB 9 lot splits and duplexes and should be placed in the SB 9 Section.

We ask that the code be amended to allow the city to charge all permissible fees. This would mean that one and only one dwelling unit would be exempt from impact fees if it is preexisting or if it is replacing a preexisting dwelling unit. However, if the original single-family premises has never been developed, all newly constructed units should be charged fees.

Fees on development should not only include DIFs, but also RTCIPs, GPMFs and other applicable fees.

If fees are to be charged on newly developed units, the code must clarify how the units are ordered to avoid confusion and abuse. This includes correcting the apparent error of referencing the second and third units being exempt versus the third and fourth units.

San Diego is suffering from a severe shortage of infrastructure funding and cannot afford to waive any impact fees unless required by the state or if the unit is preexisting and has already had impact fees paid for its development.

SB 9 does not require local agencies to waive impact fees on dwelling units developed under this law.

DRAFT Housing Action Package Section 3: Amendments to the City's Accessory Dwelling Unit and Junior Accessory Dwelling Unit Regulations

PAGE: 53

SUBJECT: Pre-Approved Architectural Plans

PROPOSED MUNICIPAL CODE: 141.0302

CURRENT MUNICIPAL CODE: 141.0302

The current ADU code does not identify pre-approved architectural plans as an ADU incentive.

Besides lowering costs and streamlining the permitting process, pre-approved plans in a variety of neighborhood or district specific styles would foster architectural cohesion and community acceptance of ADUs.

For communities within Planned District Ordinances, these plans could provide objective design standards per state law, while complying with local code such as 155.0232, which requires selecting from a list of architectural features when constructing dwelling units in numbers greater than one.

This is an incentive authorized by state law under CA Code 65583.

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SUBJECT: Fire Safety

PROPOSED MUNICIPAL CODE: 141.0302(b)(1)

CURRENT MUNICIPAL CODE: 141.0302(a)(1)

The current ADU code allows construction of ADUs, including “unlimited” bonus ADUs, in Very High Severity Fire Hazard Zones.

We ask that Very High Severity Fire Hazard Zones be excluded from ADU development if the number of units (existing home plus ADUs or JADUs) exceeds three.

This change is consistent with the HAP regulations that have been proposed for San Diego's SB 9 implementation. SB 9 allows four dwelling units on a premises that has a single home today, and our proposed limitations for ADU development would mirror the SB 9 exclusion. Fire safety zones were not just created to mitigate the risk of fires to structures, but also to ensure that residents of fire-stricken areas can be safely evacuated.

Our proposed change is supported by CA Code 65852.2(a)(1)(A) which allows local agencies to designate where ADUs may be permitted based on public safety.

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SUBJECT: Height and Setback Requirements

PROPOSED MUNICIPAL CODE: 141.0302(b)(2)(E)

CURRENT MUNICIPAL CODE: 141.0302(a)(2)(E)

The HAP amends current ADU code to stipulate a variable setback requirement based on the height of the constructed ADU.

We ask that this section be further amended to impose a four-foot setback requirement on all new detached ADUs regardless of height. We also request that the height of detached ADUs be limited to 16 feet, and the height of ADUs built atop existing structures be limited to 24 feet above ground.

The reason for this request is to allow access for fire safety, to consider the privacy of neighbors, and to ensure consistency of developments with existing structures and neighborhood development.

Our proposed change is supported by CA Codes 65852.2(a)(1)(D)(vii) and 65852.2(e)(1)(B).

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SUBJECT: Tree Replacement

PROPOSED MUNICIPAL CODE: 141.0302(b)(2)(F)

CURRENT MUNICIPAL CODE: N/A

The HAP amended code stipulates that one tree be planted for every 5,000 sf of lot size if there are “three or more” ADUs on the premises.

We ask that this section be further amended so that the stipulation of number of ADUs is “two or more”.

The reason for this change is to protect the urban canopy and reduce the heat island effects of additional development.

A development of two or more ADUs exceeds the state’s ministerial requirements for ADUs, and therefore San Diego is allowed to impose additional requirements on developments of two or more ADUs.

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SUBJECT: Parking Regulations

PROPOSED MUNICIPAL CODE: 141.0302(b)(3)(A)

CURRENT MUNICIPAL CODE: 141.0302(a)(3)(A)

Current ADU code stipulates that no off-street parking is required for ADUs.

We ask that this section be amended to stipulate that no off-street parking is required if the distance to a major transit stop is less than one-half mile walking distance.

Our proposed change is consistent with other recent San Diego parking regulations, which remove parking restrictions for developments less than one-half mile from transit, but leaves them in place for developments beyond the one-half mile limit. Note that our proposed change explicitly references walking distance as the measure of distance to transit, which reflects the wording of the state ADU code and is the most logical way to interpret proximity to transit for pedestrians.

Our proposed change is supported by CA Code 65852.2(d).

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SUBJECT: Owner-Occupancy of ADU

PROPOSED MUNICIPAL CODE: 141.0302(c)(1)(A)

CURRENT MUNICIPAL CODE: 141.0302(b)(1)(A)

The current ADU code stipulates that “The record owner is not required to live on the same premises as the ADU.”

We ask that this section be amended to specify that this exclusion be limited to ADUs permitted before January 1, 2025, and that the record owner be required to live on the same premises of any ADU permitted on or after January 1, 2025.

The proposed change mirrors the owner occupancy requirements for Junior Accessory Dwelling Units (JADUs) and will mitigate the impacts of investor speculation, absentee landlords, and gentrification of single-family neighborhoods.

The proposed change is supported by CA Code 65852.2(a)(6)(B) and the sunset of 65852.2(o) on January 1, 2025.

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SUBJECT: Clarification

PROPOSED MUNICIPAL CODE: 141.0302(c)(2)(D)

CURRENT MUNICIPAL CODE: 141.0302(b)(2)(D)

The Current ADU code stipulates that an ADU of “800 square feet” shall be permitted.

We ask this be amended to state that an ADU of “up to 800 square feet” shall be permitted.

The reason for the proposed change is to fix an apparent drafting error of the code.

Our proposed change is supported by CA Code 65852.2(c)(2)(C).

See Appendix A for the full text of the current municipal ADU Code, 141.0302(b)(2)(D).

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SUBJECT: Size Limitations on ADUs

PROPOSED MUNICIPAL CODE: 141.0302(c)(2)(F)

CURRENT MUNICIPAL CODE: 141.0302(b)(2)(F)

The current ADU code allows a maximum ADU size of 1,200 square feet, regardless of number of bedrooms or affordability.

We ask that the code be further amended to state that the maximum ADU size be 850 square feet for a studio or one bedroom unit, and 1,000 square feet for a two or more bedroom unit, as described by state law.

An additional 200 square feet would be allowed if the ADU is deemed affordable. This affordability incentive would replace the current density bonus, without distinction of Transit Priority Area.

The reason for this change is that it preserves the goals of creating affordable ADUs, while further encouraging the development of larger ADUs, with more bedrooms, that could accommodate families. This would also create more family housing in high-opportunity areas of San Diego, where access to better schools and other social amenities is desired.

Our proposed change is supported by CA Code 65852.2(c)(2)(B). Other California cities have adopted similar measures, indicating that Housing & Community Development (HCD) would be receptive to the concept.

See Appendix A for the full text of the current municipal ADU Code, 141.0302(b)(2)(F).

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SUBJECT: Removing Density Bonus in Transit Priority Areas

PROPOSED MUNICIPAL CODE: 141.0302(c)(2)(G)(i), 141.0302(c)(2)(G)(ii)

CURRENT MUNICIPAL CODE: 141.0302(b)(2)(G)(i), 141.0302(b)(2)(G)(ii)

The current ADU code stipulates the allowance of “unlimited” density bonus ADUs within a Transit Priority Area (TPA) and a single, market-rate bonus ADU outside of a TPA.

We ask first that the ADU density bonus be eliminated and replaced with a size bonus, as described under our proposed changes to 141.0302(c)(2)(F), which is section 141.0302(b)(2)(F) in the current ADU code.

Under this change, the distinction between ADU allowances based on TPA would be eliminated, and only off-street parking regulations would depend on proximity (i.e., walking distance) to transit. In both cases, San Diego would change its regulations to be consistent with the state requirement of a single ADU allowed on a single-family zoned premises.

This change will eliminate the extreme impacts of “unlimited” ADU bonuses, which have been used in actual developments to add as many as 7 ADUs to a single-family premises. The current provision effectively allows the construction of apartment buildings on single-family zoned lots, without any consideration of the impacts of the development on traffic, fire safety, parking, or infrastructure.

We ask that the ADU bonus density be eliminated in general, and interpretation of the existing code be clarified to indicate that the total number of ADUs permitted be no more than 2. The current DSD interpretation includes an extra “base” ADU allowing a total of 2 market-rate ADUs and 1 deeded-affordable ADU (3 total ADUs instead of 2). The October 2020 presentation to Council, and public comments by the Director of Planning, Mike Hansen (“one deed-restricted for each above-moderate,” May 28, 2021), support our ADU density bonus interpretation.

Our proposed change is supported by CA code 65852.2, whereby San Diego is only required to allow a single ADU and a single JADU. State law makes a distinction of proximity to transit for parking regulations, but does not require any differentiation of number of units based on transit criteria.

See Appendix A for the full text of the current municipal ADU Code, 141.0302(b)(2)(G).

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SUBJECT: Affordable ADU Income Level (AMI)

PROPOSED MUNICIPAL CODE: 141.0302(c)(2)(G)(iii)

CURRENT MUNICIPAL CODE: 141.0302(b)(2)(G)(iii)

The current ADU code stipulates no change in the Area Median Incomes (AMI) for the ADU “affordable housing” categories. The highest “affordable housing” offered remains Moderate-Income at 110% AMI.

We ask that this section be amended to reduce the highest AMI offered to 80%, the top of the Low-Income Category. This is consistent with Council President Elo-Rivera's recommendation and would result in lowering rents by \$132 to \$235/month (2021 rents). Extensive analysis determined that 110% AMI rents are essentially market rate. Furthermore, per the San Diego Housing Commission, San Diego has a surplus of housing units in the Moderate-Income category versus a large housing gap in the lower income levels.

The current ADU bonus density program has not resulted in the production of a single Low or Very Low-Income ADU. All deeded-affordable ADUs in the bonus program have been Moderate-Income at 110% AMI – NOT AFFORDABLE! In a November 23 memo, Mike Hansen touted the program for producing 49 "affordable" ADUs in a year. In fact, those studios renting for \$1830 and one bedrooms renting for \$2093 are not affordable. Filling RHNA quotas is not providing affordable housing.

Our proposed change is supported by CA ADU code AB671 (65583) which says the city must "develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, **or** moderate- income households." The City is NOT REQUIRED to include moderate-income households in its ADU affordability incentive program.

See Appendix A for the full text of the current municipal ADU Code, 141.0302(b)(2)(G).

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SUBJECT: Affordable ADU Deed Term

PROPOSED MUNICIPAL CODE: 141.0302(c)(2)(G)

CURRENT MUNICIPAL CODE: 141.0302(b)(2)(G)

The current ADU code requires that affordable ADUs be deeded affordable for 15 years to very low (60% AMI), low (80% AMI), and moderate-income households (110% AMI).

In order to promote real affordable housing and for a meaningful length of time, we ask that this code be amended to a deed restriction period of 30 years for low (80%) and very low (60%) income households. This increase in deed term is particularly important in conjunction with development allowances related to Transit Priority Areas, which are often based on future and not existing transit.

These incentives are authorized under CA Code 50053 and 65583.

See Appendix A for the full text of the current municipal ADU Code, 141.0302(b)(2)(G).

PAGE: **60**

SUBJECT: Owner Occupancy Registry

PROPOSED MUNICIPAL CODE: 141.0302(d)(1)(C)

CURRENT MUNICIPAL CODE: 141.0302(c)(1)(C)

The current ADU code stipulates that if a premises includes a JADU, then the owner must live on the premises. Neighbors of these developments have been told by Development Services (DSD) that code enforcement is essentially left up to them.

In order to facilitate community enforcement, we ask that a public registry be made available to track JADU developments and to identify the owners who have signed occupancy affidavits.

Our proposed change is supported by CA Code 65852.22. This state code does not direct cities on how to monitor and enforce it.

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SUBJECT: ADU Impact Fees

PROPOSED MUNICIPAL CODE: 142.0640(b)(1)(A)

CURRENT MUNICIPAL CODE: 142.0640(b)(1)(A)

The HAP code stipulates that the first two ADUs are exempt from the requirement to pay DIF.

We ask that this section be further amended to include all impact fees, not just DIFs. This would mean adding RTCIPs, GPMFs and any other applicable fees. All ADUs not exempted by the state should pay full impact fees. If the city is going to continue to exempt the first two units, it is unclear what the determination of the “first two” ADUs is. We ask the City to amend the code to clarify this determination.

Finally, CA code calls for only units less than 750 square feet to be exempt from fees, versus less than or equal to 750 square feet as San Diego has specified. We ask that this minor inconsistency be harmonized with state law.

San Diego is suffering from a severe shortage of infrastructure funding and cannot afford to be waiving any impact fees unless required by the state.

Our proposed change is supported by CA 65852.2(e)(3)(A), which allows a local agency to impose impact fees on the development of ADUs that are 750 square feet or larger.

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SUBJECT: SB 9 Impact Fees

PROPOSED MUNICIPAL CODE: 142.0640(b)(6)

CURRENT MUNICIPAL CODE: 142.0640(b)(6)

The HAP code stipulates that “The first two dwelling units constructed in accordance with Chapter 14, Article 3, Division 13 shall be exempt from the requirement to pay DIF. The second and third dwelling units constructed in accordance with Chapter 14, Article 3, Division 13 shall be required to pay DIF, which shall be scaled in accordance with Resolution No. 313688 adopting the Citywide Park Development Impact Fee, and Table 142-06A based upon the dwelling unit size.”

Given the references to Chapter 14, Article 3, Division 13, and *dwelling units* instead of ADUs, we believe the City this code was intended for Section 2. We will address it there.

PAGE: **63 - 65**

SUBJECT: ADUs in PDOs

PROPOSED MUNICIPAL CODE: 151.0401(b), (b)(1), (d)

CURRENT MUNICIPAL CODE: 151.0401(b), (b)(1), (d)

As outlined in several sections of 141.0302, various development regulations mandated by the state apply to ADUs/JADUs. ADUs/JADUs are now permitted by right within Planned District Ordinances (PDO) where their use was previously restricted as an “L” limited use. This section of proposed code seeks to nullify all PDO regulations that might apply to ADUs, even those rules allowed by state law. Because of ambiguities in the code, Development Services is not enforcing objective architectural criteria established within PDOs.

We ask that development regulations within Planned District Ordinances should apply and that the code should explicitly say this, except where specifically contradicted by state restrictions within 141.0302.

Objective architectural standards are allowed under CA Code 65852.2(a)(1)(B)(i), 65852.2(a)(3) and 65913.4(a)(5).

§141.0302 *Accessory Dwelling Units and Junior Accessory Dwelling Units*

Section 141.0302 provides for the construction of *Accessory Dwelling Units (ADUs)* and *Junior Accessory Dwelling Units (JADUs)*, consistent with the requirements of state law, and is intended to encourage the construction of *ADUs* and *JADUs* through several local regulatory provisions, including allowing encroachment into the interior side *yard* and rear *yard setbacks* up to the *property line*, eliminating parking requirements for *ADUs* and *JADUs*, and providing an affordable housing bonus of one additional *ADU* for every deed-restricted affordable *ADU* constructed on the *premises*, as specified in the regulations below. *ADUs* are permitted in all zones allowing residential uses and *JADUs* are permitted in all *single dwelling unit* zones by-right as a limited use decided in accordance with Process One, indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

(a) The following regulations are applicable to both *ADUs* and *JADUs*:

(1) Use Regulations

- (A) One *ADU* and one *JADU* are permitted on a *premises* located within a *single dwelling unit* zone.
- (B) An *ADU* or *JADU* shall not be used for a rental term of less than 31 consecutive days.
- (C) Guest quarters and non-habitable *accessory structures* shall be permitted in addition to *ADUs* and *JADUs*.

(2) *Development* Regulations

- (A) A minimum *lot* size is not required for the construction of an *ADU* or *JADU*.
- (B) *ADUs* and *JADUs* are not subject to the *density* limitations for the *premises*.
- (C) The *gross floor area* of an *ADU* and *JADU* shall be included in the *floor area ratio* for the *premises*.
- (D) The following *setback* allowances are applicable:

- (i) Conversion of existing *structure* to an *ADU* or *JADU*. No *setback* is required for an existing *dwelling unit* or *accessory structure* that is converted to an *ADU* or *JADU*, or to a portion of an *ADU* or *JADU*. An *ADU* or *JADU* that is constructed in the same location and to the same dimensions as an existing *structure* may continue to observe the same *setbacks* as the *structure* it replaced.
 - (ii) New *ADU* and *JADU structures*. New *ADU* and *JADU structures* must comply with the front *yard* and *street side yard setbacks* of the zone. New *ADU* and *JADU structures* may encroach into the required interior side *yard* and rear *yard setbacks* up to the *property line* to accommodate construction of the *ADU* or *JADU*.
 - (E) *ADUs* and *JADUs* shall not be required to provide fire sprinklers if they are not required for the primary *dwelling unit*. When located on a *premises* where the primary *dwelling unit* is protected with an automatic fire sprinkler system in accordance with Section R313 of the California Residential Code, an *ADU* or *JADU* shall be protected with an automatic fire sprinkler system.
- (3) Parking Regulations
- (A) No on-street parking spaces or *off-street parking spaces* are required for *ADUs* and *JADUs*. If the *applicant* chooses to provide *off-street parking spaces* for *ADUs* and/or *JADUs* located on the *premises*, those spaces shall comply with the following:
 - (i) *Off-street parking spaces* may be located in any configuration, may be within the *setback* areas, and may include tandem spaces or mechanical lifts.
 - (ii) *Off-street parking spaces* shall be located within *hardscape* areas and shall comply with the minimum standards and guidelines to provide safe and efficient means of vehicular access to the *lot*.

- (B) When a garage, carport, or covered parking *structure* is demolished in conjunction with the construction of an *ADU* or *JADU*, or converted to an *ADU* or *JADU*, replacement of those *off-street parking spaces* is not required.
- (4) Development Impact Fees for *ADUs* and *JADUs* shall comply with Section 142.0640(b).
- (b) In addition to the requirements in Section 141.0302(a), the following additional regulations are applicable to *ADUs*:
 - (1) Use Regulations
 - (A) The *record owner* is not required to live on the same *premises* as the *ADU*.
 - (B) The *ADU* may not be sold or conveyed separately from the primary *dwelling unit* unless all of the following apply:
 - (i) The *ADU* was built or developed by a qualified nonprofit corporation. For the purposes of Section 141.0302(b)(1)(B)(i), a qualified nonprofit corporation means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the California Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.
 - (ii) There is an enforceable restriction on the use of the *premises* on which the *ADU* is located pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation. For the purposes of Section 141.0302(b)(1)(B)(ii), a qualified buyer means *very low income*, *low income*, *median income*, or *moderate income* households, as specified in Table 141-03A.
 - (iii) The *lot* where the *ADU* is located is held pursuant to a recorded tenancy in common agreement that includes an allocation to each qualified buyer of an undivided, unequal interest in the *lot* based on the size of the *ADU* each qualified buyer occupies; a repurchase option that

requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property; a requirement that the qualified buyer occupy the property as the qualified buyer's principal residence; and affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for *very low income, low income, median income* or *moderate income* households for 45 years for owner-occupied housing and will be sold or resold to a qualified buyer.

- (iv) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded with the County. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.
- (v) If requested by a utility providing service to the primary residence, the *ADU* has a separate water, sewer, or electrical connection to that utility.

(2) *Development Regulations for ADUs*

- (A) *ADUs* shall be permitted in all zones allowing residential uses, consistent with the Use Table of the applicable base zone.
- (B) No more than one *ADU* shall be permitted on a *premises* with an existing or proposed *single dwelling unit*.
- (C) *ADUs* located on a *premises* with an existing or proposed *multiple dwelling unit* shall be permitted as follows:
 - (i) The number of *ADUs* permitted within the habitable area of an existing *multiple dwelling unit structure* is limited to 25 percent of the total number of existing *dwelling units* in the *structure*, but in no case shall be less than one *ADU*; and
 - (ii) Two *ADUs* that are detached from an existing *multiple dwelling unit structure* are permitted; and

- (iii) There is no limit on the number of *ADUs* permitted within the portions of existing *multiple dwelling unit structures* that are not used as livable space, including storage rooms, boiler rooms, passageways, attics, basements, or garages, if each *ADU* complies with state building standards for *dwelling units*.
- (D) An *ADU* with a *gross floor area* of 800 square feet shall be permitted on a *premises* with an existing or proposed *dwelling unit* regardless of maximum *lot coverage*, maximum *floor area ratio*, and minimum open space requirements.
- (E) An *ADU* may be attached to, located within, or detached from an existing or proposed primary *dwelling unit*, including garages and habitable or non-habitable *accessory structures*.
- (F) The minimum *gross floor area* of an *ADU* shall not be less than 150 square feet. The maximum *gross floor area* of an *ADU* shall not exceed 1,200 square feet. An *ADU* constructed within an existing *dwelling unit* or *accessory structure* may construct an additional 150 square feet for ingress and egress only.
- (G) *ADU Bonus for Affordable ADUs*. One additional *ADU* shall be permitted for every *ADU* on the *premises* that is set aside as affordable to *very low income*, *low income*, and *moderate income* households for a period of not less than 15 years guaranteed through a written agreement, and a deed of trust securing the agreement, entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission.
 - (i) There is no limit on the number of bonus *ADUs* within a *transit priority area*.
 - (ii) One bonus *ADU* is permitted outside a *transit priority area*.
 - (iii) For *ADUs* to be counted as affordable and meet the requirements of this Section 141.0302(b)(2)(G), the qualifying criteria in Table 141-03A shall be met.

Table 141-03A
Qualifying Criteria for Affordable *ADU* Bonus

	Rental <i>ADUs</i>	For-Sale <i>ADUs</i>¹
	shall be affordable, including an allowance for utilities, at a rent that does not exceed:	shall be affordable at an affordable housing cost that does not exceed:
<i>Very Low Income households</i>	30 percent of 50 percent of the area median income, as adjusted for family size appropriate for the unit.	30 percent of 50 percent of the area median income, as adjusted for family size appropriate for the unit.
<i>Low Income households</i>	30 percent of 60 percent of the area median income, as adjusted for family size appropriate for the unit.	30 percent of 70 percent of the area median income, as adjusted for family size appropriate for the unit.
<i>Moderate Income households</i>	30 percent of 110 percent of the area median income, as adjusted for family size appropriate for the unit.	35 percent of 110 percent of the area median income, as adjusted for family size appropriate for the unit.

Footnotes for Table 141-03A

(1) For-sale *ADUs* are subject to the requirements of Section 141.0302(b)(1)(B).

(c) In addition to the requirements in Section 141.0302(a), *Junior Accessory Dwelling Units* are subject to the following additional regulations:

(1) Use Regulations

(A) The *record owner* is required to live on the same *premises* as the *JADU*.

(B) The *JADU* may not be sold or conveyed separately from the primary *dwelling unit*.

- (C) Before a Building Permit may be issued for a *JADU*, the *record owner* shall enter into an agreement with the City in a form that is approved by the City Attorney. The agreement shall include the following provisions: the *JADU* may not be sold or conveyed separately from the primary *dwelling unit*; the agreement may be enforced against future purchasers; and the *record owner* shall reside on the *premises*. The City shall submit the agreement to the County Recorder for recordation. The agreement shall run with the land for the life of the *JADU*.

(2) *Development Regulations*

- (A) One *JADU* is permitted on a *premises* located within a *single dwelling unit* zone with an existing or proposed primary *single dwelling unit*.
- (B) A *JADU* of not less than 150 square feet and not more than 500 square feet is permitted within an existing or proposed *single dwelling unit*, an attached or detached garage, or an *ADU*. A *JADU* constructed within an existing *structure* may construct an additional 150 square feet for ingress and egress only.
- (C) A *JADU* shall have a separate exterior entry from the primary *dwelling unit* and shall provide a *kitchen* or an *efficiency kitchen*.

(“Accessory Dwelling Units and Junior Accessory Dwelling Units” added 10-30-2020 by O-21254 N.S.; effective 11-29-2020. Former Section 141.0302 “Companion Units, Junior Units, and Movable Tiny Houses” repealed.)

[Editors Note: Amendments as adopted by O-21254 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

Click the link to view the Strikeout Ordinance highlighting changes to prior language http://docs.sandiego.gov/municode_strikeout_ord/O-21254-SO.pdf]